

GULF STREAM CALLED IN BY AN CURRENT TO U. S. CRITICS

Writer Characterizes Popular Belief in the Flow of Warm Water Across the Atlantic as an Unscientific Myth

By HARVEY M. WATTS.

DESPITE the efforts of competent scientific authorities in this country and Europe to head off a new lease of life for the old exploded myth that the cause and conditions of climatic variations which affect northwestern Europe is due entirely to the Gulf Stream and its vagaries it is apparent from the numerous articles and dispatches appearing in *The New York Herald*, beginning with last spring, that the world is in for a new era of superstitious regard for this extremely unimportant current of the ocean, climatically speaking, by reason of the greedily accepted new belief that the building of the Flagler Railways on the Florida Keys from the mainland to Key West has done "something" to the Gulf Stream, and that this "something" in turn has done something else to the climate of northwestern Europe, to say nothing of America, Africa and the world in general.

With John Harrison of the Clapham Observatory, England, starting the ball rolling last spring and with Prof. Barget of the Prince of Monaco's bureau of oceanography more or less coming to his aid, and with hydrographers that seem to know a good deal about water movements but nothing about meteorology helping on the delusion, innocently, perhaps, and with the latest European authority, M. le Danois, referring to the subject as if the filling in the Key West Railway was accepted as playing some part in the new belief, though he denies the value of the Gulf Stream as a climate maker, the average person is again confirmed in the gross delusion that the Gulf Stream and the Gulf Stream alone gives northwestern Europe its mild climate; a belief that a whole generation of meteorologists stating the true facts as to climate and weather causations has been unable to overcome.

This persistence in the myth of the Gulf Stream as a determining climatic factor, the stream being represented as an enormous river of warm water originating in the tropics that crosses the ocean and carries its heat as if it were a colossal hot water bottle to the remotest shores of northwestern Europe and even to nearby Arctic lands—one excited navigator reporting to *The New York Herald* that on dipping water out of the Gulf Stream recently it scalded the hands of the sailor man—is one of the most amazing things in modern science. And now it would seem, as if to the old picturesqueness that made the Gulf Stream myth an easy one to believe, the dramatic addition of the serried concrete masses of the Flagler viaducts would put off the clearing up of this all potent myth for another generation.

Belief in the Gulf Stream

For in view of the fact that in casual conversation on liners crossing the ocean, in the school and the home, and in the elevator every morning, the belief in the universal efficacy of the Gulf Stream as a conditioner of special climates has become an article of faith, nothing that the Flagler engineers or American hydrographers may prove as to the Gulf Stream as the Straits of Florida not being interfered with by the Keys or by any connecting railroad viaduct, since it flows through the straits in the deep channel formed by the outer edges of the continental ridge on which the Key themselves rest, will have any effect on the popular belief.

Nor will that more important fact that permanent climatic effects are in nowise the result of water borne conditions set up by any of the well known ocean currents, and, above all, that so far as the Gulf Stream goes it does not carry a current of hot

OCTOBER HOT WAVE MECHANISM

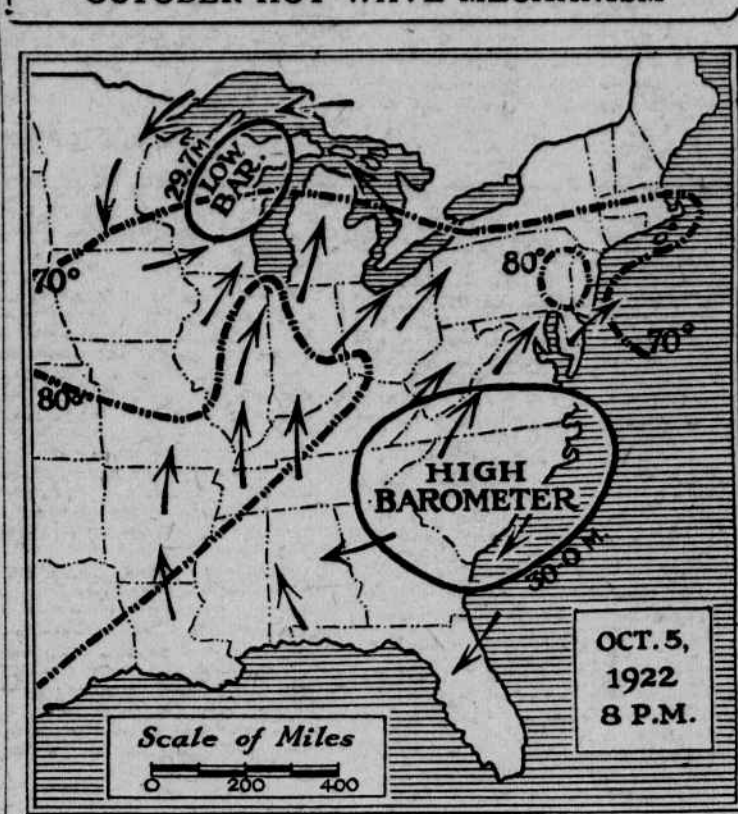


Chart No. 1.

THE 8 P. M. United States Weather Bureau map of October 5 reveals the familiar hot wave mechanism with the air circulation moving out of a high barometer over the Southern States and the adjacent Atlantic Ocean to a low barometer over the Lake regions. This form of circulation with sluggish air movement from the South to the North and the slight difference in pressure between the center of the high barometer (an anticyclonic vortex) and the center of the low barometer (a cyclonic vortex) is the kind of circulation from out a so-called subtropical high barometer that sets up the kind of weather that is blamed on the Gulf Stream. This type of circulation revealed all through the year on numerous weather maps is responsible for the hot waves of summer time, the Indian summer of October and November, the anticipations of spring, and the green Christmases in December and the January and February thaws in the winter time. Moving eastward across the continent these enormous aerial vortices are due to cosmic causes and are unaffected by the Gulf Stream or any other masses of ocean waters that lie to the east of them.

water or any kind of water over to the shores of England, Iceland or Norway, since when this much over-rated ocean current reaches the latitude and longitude of Cape Race, Newfoundland, it turns southward and does not differ in temperature and set from the rest of the ocean, impressing there the find, or many others do the moon, in the Gulf Stream an easy object to explain any phenomena in climate or weather, which they cannot understand.

None of these things, however, nor the most reassuring fact of all that the mild climate of northwestern Europe with all its possible annual variations would not be affected by any damming or diverting or deflecting the Gulf Stream at the Straits of Florida, or anywhere else in its course, so long as the eastward moving aerial drift, which is the sole distributor and determiner of climates, remains the same, will have any effect on either the warm or cold currents of the ocean. And yet not a meteorologist of any standing in this country or in Europe has proclaimed for several generations the facts as to climatic causation being a function of the general aerial circulation of the globe, which aerial drift alone distributes the effects of the permanent land and water masses. In this climatic causation the warm or cold currents of the ocean, which are themselves the direct result of the permanent wind currents, play an insignificant part, being merely a small area of the enormous masses of the oceans considered as a whole, which enormous masses of water do affect and determine climates

by reason of the fact that their mitigating effects of moisture and temperature are distributed over the land by the permanent air circulation of the globe, which circulation in the North Temperate Zone moves eternally from west to east.

Aerial Currents Carry Climatic Mitigations

It is because the aerial drift carries the mitigating effects of the Atlantic Ocean considered as a whole over northwestern Europe that the favored section of the globe has a mild "oceanic" climate, just as a similar transference eastward of the mitigating effects of the Pacific Ocean taken as a whole gives an "oceanic" climate to Alaska and the northwestern coast of the United States as far south as Oregon.

Moreover the part that the Gulf Stream and the northeastward moving water borne currents, the so-called Gulf Stream drift, play in warming up the Atlantic, so as to give southern England at times the climate of Bermuda, has been violently exaggerated by all writers on the physical geography of the sea and the land and the much more vital and undisputed generalization of meteorology have been overlooked.

Those indeed who were responsible for Capt. Bent's belief that the Gulf Stream alone saves England from being a second Labrador, and those specialists whose school books and popular geographies have justified the latest authority in England in crying out against any American tampering with the Gulf Stream at the Straits of Florida, concentrate all their attention on the phenomena of the water currents of the ocean, and not on the real distributors of climate, the permanent winds of the globe and the general circulation of the air, which general circulation, with all sorts of "boreals" possible annual and secular variations due solely to variations in the solar output, has not been affected by anything man has done within historic times. Nor has this circulation, with all its known variations from the normal, been changed permanently

within the thousands of years that the weather and climate have been experienced by civilized peoples, leaving records of their life and times.

Gulf Stream Owe Fame

To Benjamin Franklin The extraordinary fact about this fallacy is that while Benjamin Franklin, who was the man who gave the Gulf Stream its great reputation as a factor in maritime commerce, had little to say about its significance as a factor in climate making, he had a very correct idea as to the Gulf Stream being the result of the permanent wind motion and he was also far ahead of his time in believing that climate and weather phenomena were the results of the aerial circulation. His common sense attitude toward the stream was abandoned by the very famous Mathew Fontaine Maury and it is Maury who is the father and the originator of the Gulf Stream myth which he set out in his *Physical Geography of the Sea* published in 1853.

Printed in all the European languages Maury's strange delusion that the Gulf Stream caused the mild climate of Europe has been followed by most of the writers of school books in Europe, in Great Britain and in the United States down almost to the present day and date. And it is this extraordinary mental laziness that has allowed text book writers to repeat a picturesque old belief rather than accept the tenets of modern meteorology that is the real cause for the persistence of the Gulf Stream delusion in addition to a certain element of charlatanry that seems to effect the pseudo scientific writers who deal with the sea at home in observatories or on the rolling deep itself.

Twenty years ago a critical examination of physical geographies taught in Great Britain and the United States showed that most of them repeated the old Maury belief that the Gulf Stream was a hot water current that carried its beneficent influences to the very edges of the Arctic Sea. Consequently a generation brought up on such books wants a picturesque physical sign and still finds it in the undigested nonsense printed about the Gulf Stream as a colossal and inexplicable phenomenon of the coastal waters of the United States.

School Books Still Cling To the Hot Water System

Moreover, while the modern physical geographies used in most of our schools present comprehensively the accepted geographic and meteorologic facts in most beautifully illustrated volumes and are absolutely correct as to weather phenomena with the maps of the United States weather bureau carefully reproduced and explained, it is amazing that at this very moment in the schools of the country many of these books still slip on the Gulf Stream as a cause of climate, though that the myth has been exploded is occasionally revealed in certain cautious qualifications of the extreme Maury and post-Maury viewpoints.

In one very popular and splendidly published work after the wonderful character of the big ocean currents has been explained the writers summed up the matter as follows: "These ocean currents help to make the difference in temperature between the eastern coasts of America and the Western coasts of Europe in the same latitude." This use of the word "help" is a little cautious, and shows that the pro-Maury claimants, who are emphatic in saying that the ocean currents do cause the mild climate of Europe don't quite have everything their own way. But this caution is "help" is only a small part of a section which conveys wholly false impression, while in another very popular geography, famous for its range and its excellence, the writer also vitiates an otherwise excellent chapter on weather and climate, for although the work was published as late as 1915, it says in explaining climatic conditions: "From what has been said we see that the northeastern coasts of both North America and Asia are swept by ocean currents from the cold north. On the other hand, the northern coasts of Europe and North America are approached by warm drifts of water from the south."

Curiously enough, two years later the very same specialist who got out the 1915 book and who thought that cold water currents gave us our cold weather on the eastern seaboard and

an inducement to placing, or in consideration of having placed in his hands, or in the hands of another person, a demand of any kind for the purpose of bringing an action thereon, or of representing the claimant in the pursuit of any civil remedy for the recovery thereof."

He is the offense known as champertous. An attorney who, or who is convicted of it must be disbarred and is also guilty of a misdemeanor and is liable to punishment by fine and imprisonment. One of the findings of the Special Term of the Court of Appeals sustained read: "That the contract of an attorney to conduct proceedings for half the recovery at his own expense is champertous, illegal and void ab initio."

Rule Strictly Enforced Would Disbar Many Lawyers

If this provision of law as construed to apply to the agreement in the Tunnicliff case were strictly enforced it would result in the disbarment of the majority of the negligence lawyers in New York, because there is hardly one of them who does not conduct the proceedings at his own expense under an understanding or agreement with his client to that effect.

Mr. Tunnicliff's defense was that this provision of the Penal Law was an amendment to a similar provision in the old Revised Statutes, which forbade an attorney to "lend or advance or agree to lend or advance or procure to be lent or advanced any money."

In the Penal law the words "lend or advance" are omitted, and the words "promise or give" are inserted. He argued that he did not give the Campbells the money he expended in proc-

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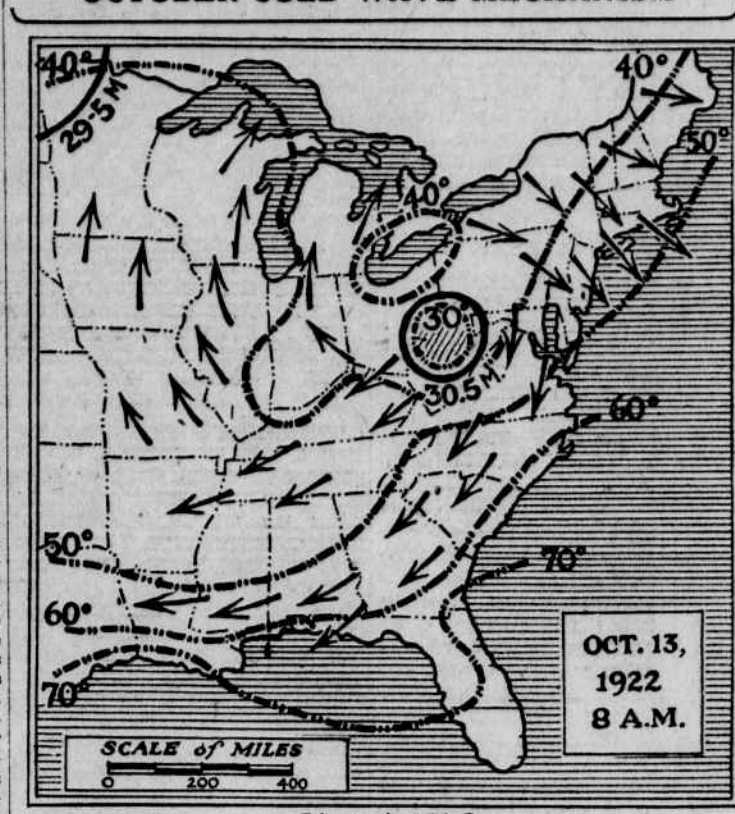


Chart No. 2.

REVERSING the hot wave mechanism of the week of October 2, 3, 4, 5, the first cool wave of autumn was brought about by a movement eastward of an intense high barometer—pressure 30.5 inches—from the Northwest, which on the morning of October 13 was central over West Virginia, with its dry and clear wind movements affecting the weather of the entire eastern half of the United States from the Gulf to the Canadian border and the Mississippi Valley to the coast, with the winds moving out spirally from the high barometric centers and carrying low temperatures to the coast, with frost and freezing weather in the mountain regions of the coastal States and the temperature line of 60 degrees at 5 o'clock in the morning carried down to the edge of the Gulf itself. These high barometer vortices, moving eastward from the North, give the coastal States the continental weather cool and crisp, and the very coast line is cooled by these movements and not by the little trickle of cold water brought down by the Labrador current, which moves southward between the Gulf Stream and the Atlantic coast.

warm water currents the mild weather of northwestern Europe, evidently had some slight qualms of conscience, for in a new physical geography he got nearer the true doctrine and practically repudiated the Gulf Stream myth as follows:

"The effects of ocean currents upon human life are many and various. They influence the temperatures of land regions seaward from their largely because they warm or cool the winds that sweep over them. For this reason the water currents in the belt of the prevailing westerlies (winds moving from the west) exert much more influence over lands to the east of them than over lands to the west of them. Although it was formerly supposed that the cold currents which sweep down along the eastern coast of North America and Asia were in large measure responsible for the cold temperatures that prevail in these regions, it is now believed that their cooling effects is confined to the brief period during which the wind blows off the sea. On the other hand, northwestern Europe and the western coast of America all the way from Alaska to California, are greatly moderated by the prevailing winds which here blow over the wide expanse of comparatively warm waters."

For the inconsiderable shiftings of the Gulf Stream due to wind pressure of a long continued and comical character are negligible in every way just as the stream itself at its best is unimportant as a climate maker. The real cause of climatic variation, the land and water masses of the globe having been the same these thousands of years, is the variation in the solar radiation which variation affects the air pressures and air movements on the earth. These solar vagaries are known to science; in time the solar variations may be anticipated and the coming variations in climate and seasonal weather forecast according to the known laws of meteorology. It is all this is dealing with, with aerial currents, chilled or warmed up, on a grand scale and not with such trifles as oceanic currents, hot or cold, dammed or undammed.

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Keep the Theory Alive

With scientific authorities in Europe worrying about the Flagler Keys and with our own school book writers either conditioning error or very tepidly giving recognition to the real facts in climate making, which have been established beyond controversy by meteorologists for half a century or more, it is not astonishing that the Gulf Stream myth should be accepted so glibly in lay circles. It is unfortunate, however, that the real facts as to climate making by the aerial circulation which distributes the permanent seasonal effects of land and water masses conditioning "oceanic" and "continental" climates are not more clearly set out in the school geographies, for if they were every child,

cutting their claim, but that he only "advanced it," and that he expected and was in the habit of reimbursing himself for the advances when the claim was collected.

The ordinary contingent fee agreement does not contain any reference either to advancing or giving the expenses of the litigation, but provides that in addition to the contingent fee the lawyer shall receive the amount of his disbursements. The lawyer does not in writing agree to make the disbursements, but he does make them, except where his client pays a retainer, which applies to a very small proportion of the negligence cases.

The contingent fee business is a large proportion of the volume of litigation cases. By means of these contingent fee contracts and a provision of law which gives the lawyer a lien on the judgment for his pay, poor litigants are enabled to get highly skilled lawyers to represent them. Some of the keenest members of the New York bar make a specialty of contingent fee cases. When they are successful it is much more profitable than a cash retainer fee.

Take a case like this Campbell matter. These heirs on paying a \$500 or \$1,000 retainer fee could have secured a lawyer to make an agreement with them by which their maximum payments would not have exceeded \$5,000 instead of the \$15,000 which a 50 per cent. contingent fee would realize. Naturally where a lawyer pays out several hundred dollars in cash besides the use of his office staff and facilities and takes a chance of ever getting a cent of it back his charge will be several times as much on a speculative basis as on a cash basis.

to say nothing of grownups, would realize from a daily perusal of the weather maps and the weather bulletin that were the cold Labrador Current dammed or diverted at the Strait of Belle Isle, as has been suggested might be done, no one in eastern Canada or in the northwestern coastal region of the United States would be the wiser, since the cold "continental" climate of our eastern coastal regions is due to conditions developing from within the continent to the westward considered as a whole.

And the reason why the climate of the northeastern seaboard of the United States is not affected by the water of the Atlantic Ocean, or any current in the Atlantic Ocean, hot or cold, that lies to the east of the shores of North America is simply because the drift of wind and weather is externally from the west to the east. And were the water masses of the Atlantic Ocean to continue to drift northward, moved by the permanent wind circulation from the west, as they do at present, and were the aerial currents of the north temperate zone to continue to move eastward as they do, it must be plain to everyone that the Gulf Stream might be actually dammed at the Straits of Florida without England or northwestern Europe ever knowing anything about it, climatically speaking.

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settlement where he might receive "from a jury a large verdict."

The evils of the contingent fee negligence business would be greatly diminished if these cases could be promptly tried. As it is, a business man who sues on a promissory note or for goods sold and delivered can have his case tried in a comparatively short time when a man crippled from an accident can be forced to wait for years.

But another aspect of the case lurks behind that decision. It is the question of British friendship with France, which is terribly strained by a kind of personal feud between Lloyd George and French opinion. France has made the British Premier a kind of whipping boy for all their disappointments and disillusion over the peace of Versailles. The French press insulted him with deliberation and intense and passionate hatred. They drew sharp distinctions between Lloyd George policy and British opinion when as a matter of fact they closely coincided.

Insulted by the vendetta Lloyd George lost his temper more than once under extreme provocation and slashed back. He was personally justified, but as a representative of the British Empire his sharp words to France were disastrous in effect. He gives any Government that follows him a supreme chance of reaffirming the Entente Cordiale and settling all differences on a new basis. It is the firm conviction of the British people that this must be done at all costs to secure future peace. But it cannot be done in my judgment, unless the United States acts as arbitrator in the matter of German reparations.

Experiments with bootmaking, furniture, rugs, silks and yarns, metal ware, pottery ware, &c., have proved they can be successfully developed in Egypt. What is needed are promoters who will organize and manage new industrial enterprises.

Says America Cannot Fairly Reproach England With Militarism and Also Denounce Her for Not Fighting the Turk

By SIR PHILIP GIBBS.

Special Cable to THE NEW YORK HERALD. LONDON, Oct. 28.

THE men and women in England who are doing their best to promote friendship between their country and the United States are seriously disturbed by criticism that is coming across the Atlantic regarding British concessions to Turkey during the Near East crisis.

One eminent American journalist, whose opinions are respected in England for fearless truth telling, states in a long article that American opinion of British policy and character has been severely knocked by the British Government's acceptance of Turkey's return to Europe, without adequate defense of the Christian minorities. England, he said, stood high in American opinion when, alone, her troops faced the Turks at Chanak and accepted the challenge to war, but it dropped to zero when that war did not happen and the Turks, fresh from the bonfire of Smyrna, were allowed back to Constantinople and Thrace. The enthusiasm of Christian churches in America on behalf of England's warlike defense of Christian Europe against Mohammedan invasion was, he added, utterly chilled.

If that is a true diagnosis of American opinion it is very disturbing, and will lead to a complete misunderstanding between American and British democracy. Liberal opinion in Great Britain believed for a long time that enlightened thought in America and the very instincts of the American people were steadily in favor of all efforts on behalf of world peace and demobilization of standing armies and reduction of naval armaments. Did not the Washington conference uphold that ideal? Has not every word that has come from the White House on the subject of international policy been in the nature of a warning that the United States desired a peaceful spirit in Europe before interesting herself directly in its economic troubles?

Only the other day Hoover issued a solemn demand for payment of European debts and expressed his belief that these could be fulfilled if the European nations were to establish themselves on a peace footing and reduce their armies and navies. With that attitude there is no quarrel among the majority of British people who are determined to avoid war if it is humanly, honorably possible to do so, and to ally war fevers in the world wherever they may break out.

Concessions to Turkey

Made to Avert World War

But the American people cannot have it both ways. They cannot accuse the British Empire of militarism in one breath and with the next unbridled it for avoiding an ordeal by battle and making great concessions for the sake of peace. They cannot call upon England to reduce her army and fleet and pay her just debts and at the same time sicken with reproach because England, single handed, with no promise or prospect of American support, or any other, relies on diplomacy rather than arms to avoid a conflict which would have spread like a raging fire throughout the East, cost vast sums of money and a new and terrible sacrifice of blood and, beyond any doubt, threatened another world war.

For they are only foolish and ignorant folk who believe war would be averted by a large verdict.

The evils of the contingent fee negligence business would be greatly diminished if these cases could be promptly tried. As it is, a business man who sues on a promissory note or for goods sold and delivered can have his case tried in a comparatively short time when a man crippled from an accident can be forced to wait for years.

Egypt Lacks Craftsmen, And Needs Promoters

Egypt, once the paradise of craftsmen, has none to-day worthy of comparison with the artisans of modern nations. With the exception of cigarette factories, she possesses not a single manufacturing worthy of the name; yet she has ample labor very cheap and able quickly to learn simple industrial arts, and the rents for buildings are moderate, since taxes are light.

American or European industrialists who are willing to assist in the development of this ancient land of the Pharaohs in modern lines can get valuable concessions from the Egyptian Government, which has appointed an economic council, under the presidency of the Minister of Finance, to take measures to extend industry in the Nile valley.

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have been restricted to Great Britain and Turkey. Behind Turkey is Russia, Egypt, Palestine, Mesopotamia, Syria, Persia and India would have been fever stricken by the attack on Mohammedan troops in Asia Minor, after their victory over the Greeks. France was passionately opposed to British resistance of Turkish claims. Germany was watching and waiting. The Balkan nations were excited and bellicose.

If Harrington had not put an iron restraint upon the young British soldiers surrounded by the Turks and under great provocation, England would have been mobilizing all her citizens, and spending all that remains to her in wealth, which is not much. After that war Great Britain would pay no money over to America, as she is now doing. Her financial ruin would have been complete. All the world, I am certain, would have been ablaze before that war ended.

Lloyd George Blamed For Coming Near to War

At the present time the British Government, especially Lloyd George, is indicted by public opinion in Great Britain, not for having avoided that war but for having dragged the nation so near its abyss by blundering diplomacy and provocative manifestations. Deep tides of public opinion in England and Scotland are rising to overwhelm the statesmen who risked that chance of war when in the judgment of all classes it was unnecessary and avoidable. Is American opinion hostile to that manifestation of the peace spirit in Great Britain? If so it is greatly inconsistent and woefully misled.

It was not cowardice but the common sense of the people of every class which forced the British Government to avoid hostilities. It was not the surrender of honorable principles but by upholding the ideals of peace and conciliation, in the spirit of the Washington conference, that England decided to refrain from war. The only point of principle, the freedom of the straits, was already acknowledged by the Turkish Standing Committee, without French support, England could not check the inevitable massacres of Christian minorities in Constantinople and Asia Minor, which now, by military arrangements between British, French and Turkish officers, have been avoided.

Misery beyond words, suffering that will be told in a tragedy beyond imagination have befallen those millions of Christian refugees now in flight; but it is certain that if the war had happened their agony would have been worse, their blood would have soaked the earth. For British battalions fighting alone would have had to concentrate at strategic points and would not have been in numbers sufficient to police the great territories where the Turks, inflamed by passion, had Christian communities at their mercy.

The question which England wants to ask American peoples is this: Are the United States ready and willing even now to fight with Great Britain in a war against the living power of Islam? If not then why this criticism of England's endeavor to avert that by statesmanship? That is the attitude of public opinion in Great Britain. Personally I feel that this problem of Greece, Armenia and the Near East is not in my mind, whether the United States will support Great Britain in war but whether American opinion will support it in a policy of peace? And not only peace between England, France and Germany but peace in the Eastern world.

No Disarmament While Near East Is Aflame

Europe cannot disarm if the East is aflame. Demobilization of the standing armies and reduction of fleets cannot go hand in hand with crusades against the Mohammedans and a rule of the sword. It must be one thing or the other, and public opinion must either reassert rule by force or rule by agreement. In Europe there is a steady growth of strategic points and opinion that force may be limited to police measures against actions which threaten peace and public security. That is the supreme idea to which we are all groping our way, and which one day may be fulfilled by the League of Nations acting as arbitrator in the matter of justice in behalf of all nations.

Why is that ideal immediately devoid of power? Why is the League of Nations utterly impotent in such a crisis as that threatened by Turkey? Very largely, it is because the United States is outside that council of nations. Europe has given no spiritual or diplomatic support to its arbitrations and awards.

In Great Britain to-day there is a political struggle in progress of extreme importance, not only to British citizens but much more to humanity at large. What is being fought out is not the candidacy of a political party or another of the chances of victory or defeat for Lloyd George, but the tremendous question between a war policy or a peace policy. If Lloyd George goes down it will be because he seemed to favor war, thereby violating his previous records on behalf of European peace.

But another aspect of the case lurks behind that decision. It is the question of British friendship with France, which is terribly strained by a kind of personal feud between Lloyd George and French opinion. France has made the British Premier a kind of whipping boy for all their disappointments and disillusion over the peace of Versailles. The French press insulted him with deliberation and intense and passionate hatred. They drew sharp distinctions between Lloyd George policy and British opinion when as a matter of fact they closely coincided.

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PERILOUS TO ADVANCE THE COSTS OF LITIGATION

By WM. McMURTRIE SPEER.

IT is dangerous for a lawyer to advance the expenses of a lawsuit, under the opinion of the Appellate Division in the matter of *Nelsen H. Tunnicliff*, an attorney. This decision applies to the thousands of negligence cases and other claims where the plaintiff through lack of means is unable to pay the expenses and where "it has been customary for the lawyer to make a contingent arrangement and advance the expense."

Without the custom of contingent fees many men and women with good and valid claims would not be able to have their claims tried, through their inability to pay a lawyer. It is probable that in half the cases on the Supreme Court calendar there is a contingent fee. A contingent fee means that there is an agreement or understanding between the lawyer and his client that if the case is won the lawyer receives a fixed per cent. of the amount of money recovered, and that if the case is not won the lawyer is not paid.

In every law suit there are expenses—the cost of preparing the papers and serving them, the clerk's filing fees and note of issue fees, the cost of investigating the facts and subpoenaing the witnesses, the jury fee, the clerk's fee for entering judgment, with additional expense in case of an appeal for printing and stenographer's services.

Somebody must pay these expenses. Usually in contingent cases they are advanced by the lawyer, who reimburses himself out of the proceeds if the case is won and loses his advances if the case is lost.

Mr. Tunnicliff is an experienced at-

torney, who for some years has specialized in discovering and locating heirs or claimants of estates. There are hundreds of dormant accounts in banks, especially savings banks, where the depositor has died and the heirs do not know of the existence of the account. In the Surrogate's Courts there are wills filed making bequests and legacies to relatives and friends who have moved away or died and whose heirs know nothing about the money coming to them unless some one tells them.

It was Mr. Tunnicliff's custom to look up the owners of dormant bank accounts and heirs to unpaid legacies. In doing this he frequently received the aid of banks and executors. A bank desires to have its old and dormant accounts disposed of, as it has to carry them on its books, advertise in a specified way from time to time a list of these accounts and after a stated number of years to turn them over to the State. Executors cannot well close their accounts and have their fees paid in full and their bonds discharged while there are unpaid legacies.

The form of retainer which Mr. Tunnicliff used read as follows: "I, said first party agree to advance for the benefit of the party of the second part all necessary costs and expenses looking to the recovery of said estate and property."

In 1916 Mr. Tunnicliff received from a San Francisco correspondent a newspaper clipping saying that John William Campbell, an aged carpenter, had died in a relief home leaving \$30,000 in cash in a bank to his two brothers, Thomas and Edward, who were living somewhere in New York State or in Maine when the will was made. Mr.

Tunnicliff inserted in New York city newspapers an advertisement for the heirs of John William Campbell. Two heirs appeared, who signed an agreement for a contingent fee of 50 per cent. of the amount recovered. Mr. Tunnicliff took legal steps in San Francisco to have the money in the bank paid to these heirs.

Heirs Sought to Cancel Fifty Per Cent. Agreement

Later the heirs undertook to cancel the power of attorney and the 50 per cent. fee agreement. They brought actions in equity in the New York Supreme Court. Special Term decided in their favor on the ground that they had the right to change their lawyer if they wished a d that the agreement with them was champertous and therefore illegal and void.

Mr. Tunnicliff appealed to the Appellate Division for the First Department, which held that the Campbell heirs had a right to change their attorney, but struck out the part of the Special Term decision deciding that the agreement was champertous and therefore void. The case was then appealed to the Court of Appeals, which overruled the modification made by the Appellate Division and affirmed the decision and findings of the Special Term.

Disciplinary proceedings were then instituted by the Association of the Bar of the City of New York to punish Mr. Tunnicliff for having made this agreement on the ground that he had committed an offense in violation of subdivision two, section 274 of the Penal Law forbidding an attorney "by himself, or by or in the name of another person, either before or after action brought, promise or give or procure to be promised or given a valuable consideration to any person as

an inducement to placing, or in consideration of having placed in his hands, or in the hands of another person, a demand of any kind for the purpose of bringing an action thereon, or of representing the claimant in the pursuit of any civil remedy for the recovery thereof."

He is the offense known as champertous. An attorney who, or who is convicted of it must be disbarred and is also guilty of a misdemeanor and is liable to punishment by fine and imprisonment. One of the findings of the Special Term of the Court of Appeals sustained read: "That the contract of an attorney to conduct proceedings for half the recovery at his own expense is champertous, illegal and void ab initio."

Rule Strictly Enforced Would Disbar Many Lawyers

If this provision of law as construed to apply to the agreement in the Tunnicliff case were strictly enforced it would result in the disbarment of the majority of the negligence lawyers in New York, because there is hardly one of them who does not conduct the proceedings at his own expense under an understanding or agreement with his client to that effect.

Mr. Tunnicliff's defense was that this provision of the Penal Law was an amendment to a similar provision in the old Revised Statutes, which forbade an attorney to "lend or advance or agree to lend